

Graham, of Methie, Esq.

Appellant.

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Maule, Widow of Thomas Ker,

Respondent.

The Respondent's Case.

THOMAS Ker deceased, Farmer at *Ovenston* in the County of *Forfar*, left an only Son, *Thomas Ker*, who before he was of Age was married to the Respondent, and by Marriage Articles of the Date, executed by him, with Consent of the Appellant, *James Graham*, *Helen Forbringham*, his Mother, *John Ker* his Uncle, and *William Ker*, Attorney in *Forfar*, as his Curators or Guardians, is provided in an Annuity or Jointure of 400 Merks Scots, or £22. 4. 5 $\frac{1}{2}$ Sterl.

THOMAS Ker, the Respondent's Husband, was of so weak a Mind that he was totally incapable of, and therefore, the Management of the Farm which his Father possessed, was continued by his Widow till her Death, in 1749. The other Affairs of the Family were directed and managed by the Appellant, who immediately after the Death of *Helen Forbringham*, disposed of the whole of the Farm, received the Price, and apply'd it as he judged proper.

Any Funds belonging to *Thomas Ker*, besides the Produce of the Stocking of the Farm above-mentioned, was a Bond Debt of 1000 Merks or £55. 11. 1 $\frac{1}{2}$ Sterl. due by *Sir Patrick Murray* of *Ouchterlony*, and another Bond Debt of 800 Merks, or £42. 4. 5 $\frac{1}{2}$ Sterl. due by *Thomas Forbringham* of *Pourie*. Of these Debts the Appellant compounded along with the other Creditors of *Sir Patrick Murray*, and received a Dividend of one half of the Sum in full of the Debt. In the Year 1751, Mr. *Forbringham* assigned to the Appellant, his Resolution of paying the Debt due to *Thomas Ker*, and another of £42. 4. 5 $\frac{1}{2}$ due to the Appellant himself, unless the Interest was restricted to 4. per Cent. 3 p. 100. not agreeing to this Proposal, received Payment of both Debts at *Martinmas*, or 11th of November, 1751.

The Appellant having thus possessed himself of the whole Funds belonging to *Thomas Ker*, amounting to 1800 Merks, or £94. 9. 5 $\frac{1}{2}$ Sterl. thought proper without the Consent or Approbation of him or any of the Family, to place the same at Interest, in the Hands of *Thomas Kinnear* a Weaver, who had lived in a Cottage, and rented a Farm at £9. 13. 4. Sterl. yearly, and at that time was under Colour of Dealing in the Linnen Manufactory, carried on the Business of a Smuggler, in Tea and Foreign Spirits; accordingly, *Thomas Kinnear* executed a Bond upon the 29th of October, 1751, for the above-mentioned Sum, payable at *Martinmas*, or 11th of November, 1752.

THOMAS Ker, the Respondent's Husband, died within three Months after this Transaction, leaving Issue by her.

The Respondent, who was hitherto a Stranger to the whole of her Husband's Affairs, after his Death, received Payment of two Years Interest, due on *Thomas Kinnear's* Bond, preceding *Martinmas*, or 11th of November, 1753, for the immediate Subsistence of herself and her Family; and soon after *Thomas Kinnear* became insolvent.

The Respondent finding the whole Stock and Subsistence of her unfortunate Family, thus apparently under the Direction and Management of the Appellant, she brought an Action in the Court of Session in her own Name as Executrix and Administratrix of the Estate of her Husband, against the Appellant, and *John Ker* her Husband's Uncle, who had been accessory to some Part of his Management, in order for Payment of the Sum contained in *Thomas Kinnear's* Bond, on these Grounds, that *Thomas Ker* being under a natural Incapacity, the Appellant had taken upon him the Direction and Management of the Affairs, and in fact did, without any Controul, manage every Matter as he judged proper. That he exacted and received Payment of the whole Funds belonging to *Thomas Ker*, and in particular of a large Sum settled on the most unexceptionable Security, in the Hands of Mr. *Forbringham* of *Pourie*. That he had lent the whole to *Thomas Kinnear*, on the personal Security of a Bond payable one Year after the Date. That *Kinnear* was a notorious Smuggler, and in such a Situation as no prudent Person could have intrusted him with such a large Sum, the entire Fortune of a Family; That therefore the Appellant, acting in the Character of a Manager or *Negotiarum Gestor* for her Husband and his Family, was liable, by the established Law of Scotland, to relieve *Thomas Ker's* Family of the Consequences of *Kinnear's* Insolvency.

The Appellant having appeared to this Action, acknowledged his having taken a Concern in the Management of the Stocking of the Farm and the other Transactions above-mentioned; but alledged he acted only as a Friend and Adviser, not as a Manager of the Affairs of *Thomas Ker's* Family, and that at the time the Money was let at Interest to *Thomas Kinnear*, he was a Person of Credit carrying on a considerable Trade, so that any Person might have in Prudence entrusted him to a greater Extent, than the Sum lent for Account of *Thomas Ker*.

The Respondent desiring a Proof of the Facts and Circumstances which gave rise to this Action, as contained in a Condescence (or Particular) and in a Memorial exhibited for her, and in the Appellant's Answer.

13 Dec. 1754.
2d Interlocutor
appealed from.

Answers, the Lord Ordinary of this Date, " Allowed the Pursuer (i.e. the Respondent) to prove, *de jure*, the several Facts as set forth and contained in the Condescendence, and Memorial given in for her, and allowed the Defenders a Conjoint Probation thereon; and also allowed the Defendant James Graham to prove *pro ut de jure*, the several Facts as set forth and contained in the Answer given by the Pursuer's Condescendence, and allowed the Pursuer a Conjoint Probation thereon.

The Appellant thought proper to prefer a Representation to the Lord Ordinary, praying an Alteration of this Interlocutor, and further insisting, that the Appellant had not a proper legal Title to join in this Action, in regard she was only in general Executrix named, but had not the Deceit of the Ecclesiastical Court, authorizing her to receive and discharge the Sum of Money.

7 Feb. 1755, 2d
Interlocutor ap-
pealed from.

The Respondent having put in Answers to this Representation, and shewed it was the universal and established Practice to grant a Licence to Executors, to prosecute Actions of this Nature, on Condition of their completing their Titles, as soon as the Sums sued for were made effectual, the Lord Ordinary of this Date, refused the Desire of the Representation, in Respect of the Answer, and adhered to the former Interlocutor.

A Proof was thereafter taken by both Parties, and reported to the Court, with respect to the following Particulars,

I. The absolute Incapacity of Thomas Ker to direct or manage his own Affairs.

Printed State of
the Proof, p. 9-
p. 16.

And as to this Article, the Appellant acknowledges, " That Thomas Ker was of a weak and defective Mind, and not fit by himself to manage Affairs of Consequence." And William Ker deposes, " That Thomas Ker was extremely weak and defective in his Judgment, and incapable of managing his own or any other Person's Business, and had also so great a Defect in his Speech, that he could hardly be understood." Thomas Forbringham, Esq. deposes, " That he was a Man of a very weak Capacity, or rather no Capacity at all;" and this Evidence is corroborated by other Witnesses.

p. 23d.
Dr. Forthering-
ham, p. 19.
Alex. Duncan,
p. 19.
Chas. Guthrie,
p. 22.

II. As to the Appellant's taking upon him the sole Direction and Management of Thomas Ker's Affairs.

This Article is proved beyond the Possibility of a Doubt. The Appellant herself having exhibited the Accounts, settled between him and Thomas Ker, upon the 20th of January, 1751, in Presence of Thomas Kinnear and John Ker abovementioned. In these Accounts the Appellant charges herself as having received the whole Monies arising from the Sale of the Stocking of the Farm at Comstoun, and with the Dividend of 10 s. per Pound, received of Sir Patrick Murray's Debt. He discharges himself with 1200 Merks, or £ 66. 13. 4 Sterl. lent to Thomas Kinnear, the Weaver, on his accepted Bill, and 1000 Merks or £ 55. 11. 15, retained in the Appellant's own Hands, and the Balance of the Accounts, amounting to £ 18. 19. 11. Sterl. is mentioned to be paid by the Appellant, to Thomas Ker, at the Time the Accounts were fitted. And it further appears by the Testimony of Thomas Forbringham, Esq. " That he was Debtor to the said Thomas Ker, by Bonds, in 8500 Merks; that in the Year 1751 he desired his Uncle James Forbringham, Merchant in Dundee, to inform Mr. Graham, that he would only keep that Money, at an Interest of 4 per Cent. which if not agreed to, he would pay it up. That he received for Answer, " That he, Mr. Graham, would receive the Money; accordingly, he paid the Money at Maristown, 1751, by his Doer Peter Kinninmond, Writer in Dundee. That he was in a Public House in the Town of Dundee, when his Doer paid the Money to Mr. Graham, as he understood it. That being Debtor to the said Mr. Graham in the Sum of 22000 Merks, he paid it up at the same Time and in the same Way and Manner, and for the same Reason that he paid the said 8500 Merks. And Peter Kinninmond the Attorney who paid the Money to the Appellant, deposes, " That he was employed by Mr. Graham, to write the Bond when the Money was lent to Kinnear, that he was present and a Witness to Thomas Kinnear's Subscription of said Bond, and that Mr. Graham was likewise a Witness, but to the best of his Remembrance, no other Person was present or a Witness to the subscribing of said Bond; and in particular is pretty positive that John Ker was not present when the said Bond was executed." And it further appears by the Evidence of Thomas Kinnear, That being in Company with Mr. Graham sometime in Autumn, 1751, Mr. Graham proposed to the Deponent to take Thomas Ker's Money; to which he answered, that he would advise with his Son; and that his Son and he afterwards agreeing that it would be convenient for them to have the Money, He the Deponent at the second Meeting granted or agreed to take the Money, and Mr. Graham told him the Day he would receive it. That he had no communicating with John Ker about the Subject Matter of that Transaction, and that he afterwards informed John Ker of what had passed. That the said John Ker was not present, either when he signed the Bond, or received the Money.

p. 23.

p. 24.

p. 25.

p. 26.

p. 27.

III. As to the Situation and Circumstances of Thomas Kinnear, previous to, and at the Time the Money was lent to him —

35, 37, 38.

Alexander Scrymgeour, of Tealin, deposes, that he has been acquainted with Thomas Kinnear, upwards of twenty Years, during which Time he has resided on the Deponent's Ground; that when the Deponent first knew him he was a Country Weaver, and lived as a Subtenant in a Possession for which he paid about 20 l. Scots (£ 1. 13. 4 Sterl.) of yearly Rent; that about the Year 1739 he took another Possession of the same Value, which he rented from the Deponent's Tenant, till the Year 1749 or 1750; that during many Years preceding the said Thomas Kinnear's Bankruptcy, and before he became a Manufacturer, he kept a Shop, wherein he sold different Sorts of Goods, such as Oil, Soap, Iron, Sugar, Tea, Flax, Spirits, and others; that a Quantity of Foreign Spirits and India Goods, said to be worth 70 l. or 80 l. Sterling, was seized in Thomas Kinnear's House, which he told the Deponent belonged to a Merchant in Dundee, and another in Perth; but since his Bankruptcy, the Deponent has been informed, that the same belonged to the said Thomas Kinnear's Son, who is said to have dealt considerably in counterband Goods; and that the said Thomas Kinnear, and his Son abovementioned, John Kinnear, signed in several Writings, Thomas and John Kinnear Company.

William

That he has been acquainted with Thomas Kinnear since the Year 1777, or 1778, about which Time the said Thomas Kinnear did begin his business in Merchandise of purchasing Green Cloth in the Town of Dunder, and which Trade he has continued down till lately, that his Affairs went into Disorder. That the Deponent has heard him say, he purchased the said Cloth for others upon Commission; and so it was understood and believed in the Court. That during the above Period, at least soon after the Year 1787 or 1788, the said Thomas Kinnear did keep a Shop in the Cattertown or Hamlet of *Forbes*, wherein he sold Sugars, Soap, Candles, Tea, Iron, Spaw, and Junery such Goods as Country Merchants do sell. That the said Thomas Kinnear dealt very considerably in the Linen Cloth Trade. That at late Years he had a Bleachfield, and that he accounted a Premium from the Truckers for improving Manufactures, and had also there two Mills for spinning in the Bleaching of his Cloth. That he had heard the said Thomas Kinnear had some Concern in Shipping, and that he had Reason to believe he also dealt in counterband and other Goods from Holland. That he has heard that preceding the Years 1787 and 1788, the said Thomas Kinnear was a common Weaver, and in very mean Circumstances. That he often used, after working of a Webb, to carry it on his Back to Dunder; and the Deponent has heard John Kerr, one of the Defendants, say, that when John Kinnear had wrought a Webb to his Wife, and brought it home, that he was very glad of a Meal of Meal, as being better than what he had at home. That the said Thomas Kinnear has been, since the Commencement of the Trade above mentioned, in tolerable good Credit, though not esteemed rich. That he knew him once borrow upon a Bond 1000 Merks (55 l. 11 s. 1 d. Sterling) and has often heard that he could have got Credit from the Merchants in Dunder for 100 l. or 200 l. Sterling, when his Occasions required it, but never knew him borrowing upon a lasting Security, farther than the 1000 Merks above mentioned. Depones, That about seven or eight Years ago he leased a Piece of Ground, which cost him 1000 Merks, about 4000 Merks, as he informed the Deponent, and which Purchase did considerably lighten his Credit in the Country. That upon this Ground he did build a House, which the Deponent thinks could not have cost him less than about 150 l. Sterl. including the Offices. That he did not consider the said Thomas Kinnear to be a Man in such Circumstances as that he would lend to him of his own Money, or of his Clients, either 10,000 Merks, the Half, or even the Third of that Sum, without having a better Security than the said Thomas Kinnear's simple Bond.

John Russell deposes, That he understood the said Thomas Kinnear and his Son John, to be in Company. That the said Thomas Kinnear did lately inform him, that his Son had been concerned in foreign Trade, in which he had been unlucky; and by this the Deponent did understand that the said John had been dealing in a smuggling Trade, and had the Goods seized by the King's Officers; and that these Misfortunes in the foreign Trade, the said Thomas Kinnear did assign as one Reason for his Bankruptcy.

John Miller deposes, That he has heard it said, that John Kinnear, Son to the said Thomas Kinnear, dealt in the smuggling Trade, and that the Losses sustained thereby was in Part the Occasion of said Bankruptcy, as the said Thomas Kinnear himself told the Deponent.

Mr. John Smart, Minister of the Gospel, deposes, That the said Thomas Kinnear, first when the Deponent knew him, was a Country Weaver, living in a Cottage, but afterwards was employed by the Merchants in buying Linen Cloth upon Commission. That he set up a Retailing Shop, and furnished the Deponent's Family, till the Time of his Bankruptcy, with Tea, Sugar, Lint, and such other Goods as they had Occasion for.

It is further proved, by the concurring Testimonies of Ebenezer Macculloch *, William Tod *, James Milne, and John Pirgairn *, that Thomas Kinnear and his Son were joined in a Company Trade.

The Appellant brought no contrary Proof as to any of the Articles above mentioned, except as to the Credit of Kinnear, and the Extent of his Business as a Manufacturer — From this Proof it appears he dealt to a considerable Extent, in buying Linen Cloth by Commission, for the British Linen Company, and others; and that, on some Occasion, he had Credit from them, for a short Time, in Flax and other Goods, to the Extent of some hundred Pounds, to enable him to carry on that particular Branch of Business.

Council having been heard upon the Import of the Evidence, and the Merits of the Question, it was argued for the Respondent, in Support of her Action:

That from the Proof taken, it appeared that Thomas Ker was altogether incapable of governing himself or his Affairs — That he was ignorant of every Matter transacted on his Account, his Hand being only employed to sign such Writings as were presented to him by the Appellant; but, as acknowledged by the Appellant's Agent on Oath, he was incapable of examining the Contents of such Writings — That, in this Situation, the Appellant not only acted as Director and Adviser, but was concerned in all the Transactions, and even took upon him the executive Part in the Management of Thomas Ker's Affairs — That he did this without any special Authority, or Mandate from Thomas Ker — That therefore he was to be considered in the Character of a *Negotiorum Gestor*, who, by the Law of Scotland, founded on the Principles of the Civil or Roman Law, is bound to the most exact Diligence; and tho' he may have acted with such Care and Attention as a Person commonly bestows in his own Affairs, yet he is liable for the Consequences, if it appears any other Person of more Diligence and Exactness could have negotiated the Affairs to greater Advantage, because, by his Means, another having been excluded from the Management, the Affairs of an innocent Person have suffered. That therefore, the only possible Question in the present Case was, Whether the Appellant, in settling the whole Stock and Subsistence of this unfortunate Family in the Manner he has done, had been guilty of any Negligence? For if any Degree of Negligence appeared, he is unquestionably liable to repair the Loss arising from his Management — That in the present Case, the Appellant was most certainly culpable in raising the Money settled on the most undoubted Security, in the Hands of Mr. Forbriugham; but that this Fault might have been repaired, if he had taken the least Care in resettling it — That it might have been expected, as most certainly it was the Appellant's Duty, to have made Enquiry by himself and others, of a Person of some apparent Fortune or Estate, who wanted to borrow Money at Interest — That no Enquiry of this Kind was made — That, on the contrary, it appeared he immediately offered the Money to Thomas Kinnear,

sear, a Favourite of his own, a Person without any original Stock, or the probable Means of procuring what he acquired or procured on Credit; one who for several Years, and at that Time, was not only concerned in the infamous and ruinous Practice of Smuggling, an Object of the Displeasure of the Law, and whose other Dealings were merely a Cover to conceal this Traffic; that the Appellant, for Reasons wholly unknown to himself, without the Advice of any Friend or Relation of the Family, had taken upon him to advance and disburse by the Money received from Mr. *Forbington*, but likewise the whole other remaining Funds belonging to *Thomas Ker*, upon the single Security of this Favourite, without proposing or demanding any further or additional Security. That it was most remarkable the Appellant received, upon the 17th of 5th Stock from Mr. *Forbington*, on his own Account at the very Time *Thomas Ker*'s Money was paid; but this he took Care to dispose of, to better Advantage, and at no Time did he risk any Part of his own Money in the Hands of *Thomas Ker*. That it was further remarkable he employed an Attorney to execute the Security by *Thomas Ker*, not in the ordinary Manner, by taking a Bond payable within three, or six Months, at farthest, but at the Distance of twelve Months after the Date of the Bond, so that it was not in the Power of the Court to order the said Payment, or take any Step for Security of the Money till the Lapse of a full Year, and until it was necessary to give some Sanction to such an extraordinary Transaction, by making it appear that some of *Thomas Ker*'s Friends were concerned in it, the Appellant procured *John Ker*, the Uncle to sign a Witness to the Bond several Months after it was executed, though it appears on Proof he was not present at the Execution of the Deed, or any wife concerned in the Transaction. That these Facts might justify a Suspicion of the Appellant's acting from Principles nowise disinterested; but without entering into his Motives and Designs, it was sufficient for the Respondent to say, That it appeared most manifest the Appellant had acted imprudently or negligently, and his Conduct having proved consequently ruinous to the helpless Family, he ought thereby to take the Debt upon himself, and was liable to repair the Loss, by Payment of the Sum lent to *Thomas Kinnear*; the Respondent conveying in his Favour the Right to *Kinnear*'s Bond, and interfering further to him his Action of Relief against *John Ker*, or any other Person who was accessory to these Transactions.

The Appellant answered, That *Thomas Ker*'s Situation was such as required the Interposition of some Friend to advise and assist him in the Management of his Affairs. That the Appellant, from the Motives of Humanity, had acted the Part of a Friend and Adviser; but as *Thomas Ker* was under no legal Incapacity, it was presumed he authorised what was done and transacted. That in this View the Appellant could not properly be considered in the Character of a *Negotiorum Gestor*, which also supposes the Absence or Ignorance of the Person whose Affairs are managed. That therefore he could not be liable, unless it appeared he had acted fraudulently. That *Thomas Kinnear* was a Merchant of good Credit and Character, reputed solvent, and credited by others in Sums near equal to *Thomas Ker*'s Stock, at the Time of this Loan. That though the Event proved unsuccessful, the Appellant was nowise blameable, as no Fraud appeared in his Conduct, nor did any Profit result to him from the Transaction, and therefore the Action ought to be dismissed.

26 Nov. 1756.
3d Interlocutor
appealed from.

The Lords of this Date pronounced the following Interlocutor: "Find *James Graham of Muthil*, liable to the Pursuer (i. e. Respondent) in the Sum of 10,700 Merks, lent to *Thomas Kinnear*, and Annualrent thereof, resting since *Martinmas 1753*, upon her making a valid Conveyance to him of the Bond for the above Sum granted by *Thomas Kinnear* to *Thomas Ker*; and in Respect the Pursuer does not insist against *John Ker*, they Affordzie him, and Decern."

4 March 1757,
4th Interlocutor
appealed from.

The Appellant put in a reclaiming Petition against this Interlocutor, to which Answers were made for the Respondent, and the Lords of this Date "Adhered to their former Interlocutor, and refused the Desire of the Petition, but (i. e. without) Prejudice to the Petitioner's insisting for Relief against *John Ker*, or any other Parties as Accords."

The Appellant has thought proper to appeal to your Lordships, from the before-mentioned Interlocutors of the 13th of December 1754, the 7th of February 1755, the 26th of November 1756, and 4th of March 1757; but the Respondent humbly hopes, That all the said Interlocutors, being agreeable to Law and Equity, will be affirmed, and the Appeal dismissed with Costs, for the following, among other

REASONS:

I. A Person who voluntarily, and without any Authority, takes the Management of another's Affairs, makes himself responsible for all the Consequences. He excludes all others from acting, and is therefore bound to bestow the greatest Care and Attention: inasmuch that if mere Negligence appears, without ill Design, the Person thus officiously taking the Management, is in Law and Equity bound to repair every Loss.

II. The Appellant, who indisputably managed the Affairs of *Thomas Ker*, without any Authority, acted contrary to the known Rules of Prudence; and his Conduct, when considered in the most favourable Light, must appear grossly negligent and culpable. When possessed of the whole Fortune of a helpless Family, without making any Enquiry, or concerting any Scheme whatever for the security of it, he immediately sunk the Whole in the Hands of a common labouring Manufacturer, embarked in the pernicious Traffic of Smuggling; and who, being thus hourly exposed to Ruin, was soon after reduced to a Situation, which must have been expected, and certainly might have been foreseen, by any one who knew him, or his Circumstances.

III. The Circumstances attending this Loan were remarkable, and speak Fraud and Collusion much more than Negligence. The Appellant, though from particular Connection engaged to support his Favourite

yourite, yet cautiously avoided entrusting him with any Part of his own Funds --- Having resolved to supply him with *Thomas Ker's* Money, which he had then at Command, he took it out of the Hands of Mr. *Thomas Forbusham*, a Gentleman of a considerable landed Estate, on Pretence of placing it out at an Interest of 5 per Cent. instead of 4 $\frac{1}{2}$, though to the Hazard and Loss of the Principal, by lending it to *Kinnear*. He then proceeded with much Secrecy, commencing his Intention to none but the Attorney who wrote and witnessed the Execution of the Bond --- He took Care to secure *Kinnear* in the Possession of the Money for an uncommon Length of Time, by taking an Obligation payable a full Year after its Date --- And finally, to give a Sanction to his Scheme, he afterwards most artfully procured *John Ker*, the Uncle of *Thomas Ker*, to sign as a third Witness to the Bond, though he was not present at the Execution of it, or knew the Transaction till some Time after.

Objection. *Thomas Kinnear*, at the Time of this Loan, was a Merchant of large Dealings and of undoubted Credit --- He employed several Hands in the Linen Manufactory, and was entrusted by the *British Linen Company* at *Edinburgh*, and by Merchants in *Dundee* to a large Extent, both in Flax and Money; and so little was his Security suspected, that the Respondent suffered the Money to remain in his Hands above fifteen Months after it became due, and received Payment of two Years Interest, by which she approved of the Appellant's Management, and is therefore now barred from obtaining the Relief she claims.

Answer. The Credit furnished to *Kinnear*, was by Merchants and Dealers in the Linen Manufactories, who trade for Profit, and are obliged to venture that they may gain; they lived at a Distance, and were unacquainted with his Situation and Circumstances. The Returns were made by *Kinnear* in a few Days or Weeks, so that no Loss could have happened, if he had confined himself to the Branch of Business he undertook for their Account. This cannot palliate or excuse the Appellant's Conduct --- He was long and intimately connected with *Kinnear*; he knew his Rise and Progress in Life, and yet ventured to entrust him with a large Sum, not demandable for a full Year after, by which he manifestly intended a permanent and lasting Loan, where the best Security ought to have been taken --- The Respondent, equally ignorant of this Transaction, and of all other Business, was obliged to accept of two Years Interest of this Money for the immediate Subsistence of her Family. She gave a general Power to an Attorney to receive Monies due to her Husband, without knowing who was bound, in *Kinnear's* Bond --- This Authority was necessary to be given, but cannot be construed into an Approbation of the Appellant's Conduct, or waiver of the Relief now decreed to her; nor can this or any other Act of the Respondent disappoint the just Claim of her Infant Children, whose Right she is now prosecuting.

C. YORKE.

AL. WEDDERBURN.

Die Jovis 9^o Martij 1758.

Ordered & Adjudg'd, that the said Appeal be & is hereby dismissed this Court, and that the said several Interlocutors therein complained of be and the same are hereby affirmed.

Elizabeth Maud, wife of the Respondent
Mrs Kerr, - - -

The Respondent's Case.

To be heard at the Bar of the House of Lords, on
Wednesday the Day of March, 1758.

C. YORKE
A. WEDDERBURN

Handwritten notes and signatures, including "The Respondent's Case" and other illegible text.